

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 281 be amended to read as follows:

- 1 Page 4, between lines 17 and 18, begin a new paragraph and insert:
- 2 "SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2005,
- 3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2008]: Sec. 7.1. (a) In determining what sentence to impose
- 5 for a crime, the court may consider the following aggravating
- 6 circumstances:
- 7 (1) The harm, injury, loss, or damage suffered by the victim of an
- 8 offense was:
- 9 (A) significant; and
- 10 (B) greater than the elements necessary to prove the
- 11 commission of the offense.
- 12 (2) The person has a history of criminal or delinquent behavior.
- 13 (3) The victim of the offense was less than twelve (12) years of
- 14 age or at least sixty-five (65) years of age at the time the person
- 15 committed the offense.
- 16 (4) The person:
- 17 (A) committed a crime of violence (IC 35-50-1-2); and
- 18 (B) knowingly committed the offense in the presence or within
- 19 hearing of an individual who:
- 20 (i) was less than eighteen (18) years of age at the time the
- 21 person committed the offense; and
- 22 (ii) is not the victim of the offense.
- 23 (5) The person violated a protective order issued against the
- 24 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or

IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person.

(6) The person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person.

(7) The victim of the offense was:

(A) a person with a disability (as defined in IC 27-7-6-12), and the defendant knew or should have known that the victim was a person with a disability;

(B) mentally or physically infirm; or

(C) intentionally selected by reason of actual or perceived race, color, religion, national origin, sexual orientation, sex, or gender identity.

(8) The person was in a position having care, custody, or control of the victim of the offense.

(9) The injury to or death of the victim of the offense was the result of shaken baby syndrome (as defined in IC 16-41-40-2).

(10) The person threatened to harm the victim of the offense or a witness if the victim or witness told anyone about the offense.

(11) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

1 (11) The person was convicted of a crime involving the use of
2 force against a person who had repeatedly inflicted physical or
3 sexual abuse upon the convicted person and evidence shows that
4 the convicted person suffered from the effects of battery as a
5 result of the past course of conduct of the individual who is the
6 victim of the crime for which the person was convicted.

7 (c) The criteria listed in subsections (a) and (b) do not limit the
8 matters that the court may consider in determining the sentence.

9 (d) A court may impose any sentence that is:

10 (1) authorized by statute; and

11 (2) permissible under the Constitution of the State of Indiana;
12 regardless of the presence or absence of aggravating circumstances or
13 mitigating circumstances."

14 Page 4, after line 29, begin a new paragraph and insert:

15 "SECTION 6. [EFFECTIVE JULY 1, 2008] **IC 35-38-1-7.1, as**
16 **amended by this act, applies only to crimes committed after June**
17 **30, 2008.**"

18 Renumber all SECTIONS consecutively.

(Reference is to ESB 281 as printed February 22, 2008.)

Representative Porter